

IDEM  
OFFICE OF  
WATER QUALITY



J. Nathan Noland, President

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Office (317) 638-6997  
Fax (317) 638-7031  
admin@indianacoal.com

INDIANA COAL COUNCIL, INC.  
150 West Market Street, Suite 400  
Indianapolis, IN 46204  
[www.indianacoal.com](http://www.indianacoal.com)

## OFFICIAL COMMENT

December 28, 2011

Ms. Martha Clark Mettler  
Deputy Assistant Commissioner  
Office of Water Quality  
Indiana Department of Environmental Management  
Indiana Government Center North Room 1255  
100 North Senate Avenue  
Indianapolis, IN 46204

Re: IDEM Antidegradation Standards and Implementation Procedures Proposed Rule as Publicly  
Noticed on December 9, 2011

Dear Ms. Mettler:

These comments are submitted on behalf of the Indiana Coal Council, Inc. ("ICC") with respect to the Antidegradation Standards and Implementation Procedures Proposed Rule as publicly noticed on December 9, 2011 ("3<sup>rd</sup> Notice"). The ICC is a trade association representing Indiana coal producers and related entities. Members of the ICC will be impacted by this proposed rule. The ICC appreciates the opportunity to participate in the development of the rulemaking for Antidegradation Standards and Implementation Procedures in Indiana. It is critical in this time of energy demand that IDEM develop antidegradation standards and implementation procedures that are reasonable in balancing protection of water quality and promotion of economic development opportunity and are clear in their meaning and operation.

The draft of the Antidegradation Standards and Implementation Procedures, as proposed by IDEM on May 9, 2011 and revised in the September 14, 2011 Proposed Rule reflecting interim recommendations of Board Members Gary Powdrill and David Wagner, contains welcomed clarifications. The December 9, 2011 draft of the rule reflects progress in the development of the program. The ICC continues to urge additional refinement of the rule. The ICC has participated through oral and written comments and again welcomes the opportunity to provide additional written comments.

**General Permitting Issues.** The ICC appreciates the efforts by IDEM to respond to the questions concerning the next phase of the development of an administrative NPDES general

permitting program. IDEM represents that it has begun the process of converting Indiana's general permits from a permit-by-rule format to entirely administratively issued general permits. Antidegradation requirements will be considered throughout the process, and we assume from the response to comments that IDEM will conduct the appropriate level of antidegradation review on each administratively issued general permit. If the administratively issued general permit satisfies the antidegradation requirements, then any NOI that satisfies the general permit requirements will also satisfy the antidegradation requirements. Administratively issued general permits will be renewed/re-issued every five years.

ICC suggests that in order to provide appropriate clarification to the casual reader with regard to the preparation of an antidegradation demonstration as provided under 327 IAC 2-1.3-5-1(b) and the role of the exemptions that the following be inserted:

5(b) An antidegradation demonstration, not exempt under Section 4 of this rule, that includes the basic information...

**Antidegradation Trigger.** IDEM's proposed implementation procedures do not limit antidegradation review to only permits subject authorizations pursuant to the Clean Water Act. IDEM is unnecessarily creating a complex rule to both implement and to understand. In addition, IDEM's use of a de minimis "trigger" rather than a "trigger" based on a new or increased permit limit is overly broad and more stringent than necessary to comply with the Clean Water Act and current U.S. Environmental Protection Agency ("USEPA") guidance. IDEM is not required to set a de minimis trigger by EPA law or policy and the ICC joins other organizations in urging that IDEM instead base its antidegradation implementation procedures upon the need for a permit revision pursuant to the CWA.

A review of other states' programs accepted by USEPA confirms that the agency's regulations do not mandate that the antidegradation "trigger" be based on any de minimis levels of water quality changes, but rather allows for sufficient flexibility for states to base such a trigger on the need for a new or increased permit limit that contributes to a lowering of water quality. Many states use a trigger based on NPDES permitting; including: Illinois (302.105(c)(2). and Ohio (3745-1-05(B)):

If IDEM bases its antidegradation program on any lowering of water quality beyond de minimis levels and fails to tie its review to NPDES permitting (or specific components of the Clean Water Act), its program would lack specificity and require unnecessary, expensive antidegradation reviews that will have ill-defined goals. Therefore, it is suggested that IDEM modify Section 1.3.1(b) Antideg #08-764 Proposed Rule by specifically tying the "trigger" for the antidegradation program review to permitting under the Clean Water Act as follows:

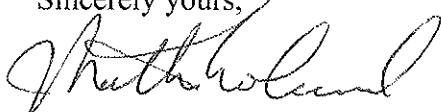
*(b) The antidegradation implementation procedures established in sections 4 through 7 of this rule apply to a proposed new or increased loading of a regulated pollutant to surface waters of the state from a deliberate permitted activity subject to the Clean Water Act sections, 402, including a change in process or operation requiring a permit modification, permit issuance, or permit reissuance that will result in a significant lowering of water quality.*

This modification to the proposed rule will provide clarity and specific guidance as to when an antidegradation review is required.

**Narrative Criteria.** The term "regulated pollutant," continues to leave unanswered the question as to how narrative criteria will be applied. The ICC joins others in the regulated community in suggesting that the rule provide that a regulated pollutant be any numerically expressed parameter for which water quality criteria have been adopted. IDEM has responded to comments by stating that it understands that narrative criteria will not be used in calculating degradation under de minimis. With that being said, the agency should conclude that the de minimis exercise is unnecessarily complex as evidenced by the awkward narrative criteria application discussion. IDEM needs to clarify the use of numerically expressed narrative criteria only and eliminate the de minimis exercise entirely.

Finally, as Indiana considers its antidegradation implementation program it is essential that IDEM recognize the level of complexity of this proposed rule relative to other states in the region. For example, the necessity and alternatives analyses as proposed for Indiana is considerably more difficult to implement than that in Illinois or Kentucky. These types of details, as well as other examples, result in a competitive disadvantage for Indiana. The ICC wants Indiana to have an antidegradation implementation program that is good for Indiana's environment and its energy industry.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "J. Nathan Noland", written in dark ink.

J. Nathan Noland